

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAMES EARL GUNNELL,

Defendant.

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Case No. 11-3083-01-CR-S-RED

ORDER

Now before the Court is Defendant's Motion to Suppress Evidence Seized from Defendant's Motorcycle Pursuant to a Warrantless, Nonconsensual Search following a Pretextual Stop (Doc. 37), Government's Suggestions in Opposition to Defendant's Motion to Suppress Evidence (Doc. 38), the Report and Recommendation of United States Magistrate Judge (Doc. 46), and Defendant's Objections to Report and Recommendation of U.S. Magistrate Whitworth (Doc. 47).

In Defendant's objections to the Report and Recommendation he argues that the drug detection dog search was unreliable and, thus, could not serve as probable cause for the physical search of Defendant's motorcycle which led to the discovery of the methamphetamine. However, as stated by the Eighth Circuit in *U.S. v. Bowman*, 660 F.3d 338, 345 (8th Cir. 2011), "[a]ssuming that the dog is reliable, a dog sniff resulting in an alert on a container, car, or other item, standing alone, gives an officer probable cause to believe that there are drugs present." The testimony at the suppression hearing illustrated that the dog who performed the relevant sniff, Raider, was reliable. For example, there was evidence which illustrated that Raider was certified to conduct drug-detection searches with his handler, Officer Tjelemand; that Raider completed a 13-week

training program concerning drug detection searches; and that Officer Tjelemand completed a 13-week certification training program concerning drug detection searches.

After careful and independent review of the parties' submissions, this Court agrees with and **ADOPTS** the Report and Recommendation of United States Magistrate Judge (Doc. 46) in full. Defendant's Motion to Suppress is **DENIED** (Doc. 37). Defendant's Objections to the Report and Recommendation are **OVERRULED** (Doc. 47).

IT IS SO ORDERED.

DATED: February 11, 2013

/s/ Richard E. Dorr

RICHARD E. DORR, JUDGE
UNITED STATES DISTRICT COURT